

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

KEITH JAMERSON,

Plaintiff,

CASE NO. CV-F-02-5789 AWI DLB P

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

vs.

LEWIS, et al.,

Defendants.

[Doc. 8]

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is the first amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the

claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

Plaintiff brings this civil rights action against correctional officials employed by the Department of Corrections at Pleasant Valley State Prison. Plaintiff names as defendants Warden Gail Lewis, Associate Warden W.R. Williams, Correctional Lieutenant M.S. Webster, Senior Librarian H. Overstreet, and Correctional Officer Tucker. Plaintiff alleges that each of the named defendants has interfered with his access to the facility library on multiple occasions. He contends that the interference has caused irreparable damage to his pending litigation. Plaintiff contends that despite having a pass to the facility library, on June 12, 2002, defendant Tucker denied him access to the library and sent him back to his cell. He contends that he was denied access to the library for a period of one year which caused his civil case to be dismissed.

Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518 U.S. 343, 346 (1996). The right of access is merely the right to bring to court a grievance the inmate wishes to present, and is limited to direct criminal appeals, habeas petitions, and civil rights actions. Id. at 354. The State is not required to enable the inmate to discover grievances or to litigate effectively once in court. Id.

Inmates do not have the right to a law library or legal assistance. Id. at 351. Law libraries and legal assistance programs are only the means of ensuring access to the courts. Id. Because inmates do not have “an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense.” Id. Rather, an inmate claiming interference with or denial of access to the courts must show that he suffered an actual injury. Id. The Casey Court further stated:

Finally, we must observe that the injury requirement is not satisfied by just any type of frustrated legal claim . . . The tools it requires to be provided are those that the inmate need in order to attack their sentences,

1 directly or collaterally, and in order to challenge the conditions of their
2 confinement. Impairment of any other litigating capacity is simply one
3 of the incidental (and perfectly constitutional) consequences of conviction
4 and incarceration.

5 Casey, supra, 518 U.S. at 346. Plaintiff generally refers to a “civil case” and mail that he attempted to
6 send to the Social Security Administrative Hearings & Appeals Office. Plaintiff alleges he was denied
7 needed library access, presumably to work on these cases. These allegations do not provide sufficient
8 detail to establish denial of access such that he suffered actual injury within the meaning of Casey. That
9 plaintiff did not have the law library access he would like, does not subject defendants to liability.

10 The Court finds it necessary to dismiss the complaint in its entirety. The Court will grant
11 plaintiff an opportunity to amend to cure the deficiencies of this complaint. Failure to cure the
12 deficiencies will result in dismissal of this action without leave to amend.

13 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
14 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625
15 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is
16 involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
17 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362
18 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th
19 Cir. 1978).

20 In addition, plaintiff is informed that the Court cannot refer to a prior pleading in order to make
21 plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended complaint be
22 complete in itself without reference to any prior pleading. This is because, as a general rule, an
23 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
24 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function
25 in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the
26 involvement of each defendant must be sufficiently alleged.

27 In accordance with the above, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff's complaint is dismissed;
2. The Clerk's Office shall send plaintiff a complaint form; and

IT IS SO ORDERED.

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE